be followed in the future. In the present case, however, Mr. Jeavons has sworn on oath that he kept the documents separate, and is positive that Ex. A was found in the 3rd appellant's shop. This evidence was accepted by the learned Magistrate, and it would be contrary to every principle for an appellate Court to question such a finding.

A point which was strongly urged on behalf of the appellants was that they had no motive for committing an offence which would benefit themselves but T.K.S. The learned Deputy Public Prosecutor suggested several motives which did not appear to me to be very convincing. It is, however, unnecessary to prove any motive if the commission of the offence has been established beyond reasonable doubt, and I would only add that the mere fact that no motive has been established by no means proves that no motive existed.

The appeals of the 2nd and 3rd appellants against the convictions on the 2nd charges must therefore be dismissed, and the convictions and sentences confirmed.

Appeal dismissed.

[APPELLATE CRIMINAL JURISDICTION]

POYSER, C.J., McELWAINE, C.J. (S.S.) & GORDON-SMITH, Ag. J.A.

November 24, 1939.

SHEIKH HASSAN BIN SHEIKH IBRAHIM
v.
PUBLIC PROSECUTOR.

[NEGRI SEMBILAN CRIMINAL APPEAL No. 10 of 1939]

Penal Code, Ss. 409, 477A—criminal breach of trust—falisfication of accounts—series of offences connected with each other—"same transaction"—joinder of charges—Criminal Procedure Code, Ss. 151, 153 (2), 163, 165.

The appellant was charged with criminal breach of trust in respect of $23/- paid to him on 23 separate occasions within the space of a year. To this charge were appended particulars of the persons from whom the payments were made. The second charge alleged that with intent to defraud he committed falsifications of accounts by wilfully omitting to enter the twenty-three payments in his cash book. At the trial a third charge was added of omitting to enter in the certificate books particulars of the twenty-three marriages and divorces in respect of which the $23/- were received. The appellant was convicted on the first charge and acquitted on the other two.

Held, on appeal to the Court of Appeal, that the first charge was really of a general deficiency of $23/-, the particulars being not so much particulars of separate misappropriations as indications as to how the deficit was arrived at and was a good charge under Section 153 (2) of the Criminal Procedure Code.

Held further, that the criminal breach of trust charged was one offence though made up of twenty-three items and that when the falsifications charged were confined to those items, the criminal breach of trust and the falsifications were so closely inter-related that the twenty-three falsifications became a single offence like the twenty-three breaches of trust which formed a single offence and that the falsifications were related to the criminal breach of trust items by community of purpose and they stood to one another in the relationship of cause and effect; hence the two charges were properly joined.

Cases referred to:—

(1) *Powell and wife v. Streatham Manor Nursing Home,* (1935) A.C. 243.

(2) *R. v. Sakandar Khan,* 8 M.L.J. 123.

F. A. Briggs for the appellant submitted on behalf of the accused that although on the charge of criminal breach of trust a gross deficiency could be charged under Section 153 (ii) of the Criminal Procedure Code, this special power did not apply in the case of charges of falsification of accounts, and that, as the second and third charges had been improper in this respect, there was an illegal misjoinder of charges and, although the accused was acquitted on the charges of falsification, the trial as a whole was therefore illegal.

The Court of Appeal held that, as under Section 153 (ii) the defalcation was to be regarded as a single offence in respect of the gross sum missing, so also all improper items or omissions in the accounts, which came into existence for the purpose of effecting or concealing that defalcation, must be deemed together to constitute one offence of falsification. No relevant authorities appear to exist on the point.

A. J. Grattan-Bellew, Deputy Public Prosecutor for Public Prosecutor. There was some corroboration of the evidence of the appellant's clerk and as the learned trial Judge, who had seen and heard the witnesses had rejected the evidence of the appellant and accepted that of his clerk, this finding of fact should not be upset—*Powell and wife v. Streatham Manor Nursing Home*[1] at page 249 *et seq.*

Although the Criminal Breach of Trust in fact consisted of 23 offences and the falsifications of accounts consisted of 46 offences, nevertheless there was in reality only one transaction namely a general design to defraud the Government and the falsifications of accounts were a series of acts in the transaction and done for the purpose of concealing the fraud; consequently by virtue of sections 153 (ii) and 165 (i) of the Criminal Procedure Code (Cap. 6) the joinder was proper.

The judgment of the Court of Appeal **(Poyser, C.J., McElwaine, C.J., (S.S.) & Gordon-Smith, Ag. J.A.)** was as follows:—The appellant was put on his trial on two charges. The first charged him that he did between the 1st February, 1937, and the 31st January, 1938, commit criminal breach of trust of $23/-, an offence punishable under section 409 of the Penal Code. To this charge was appended "particulars", namely, the names of twenty-three persons from each of whom he received one dollar.

The second charge alleged that with intent to defraud he committed falsification of accounts by wilfully omitting to enter the twenty-three payments in his cash book, an offence punishable under section 477A of the Penal Code.

During the trial a third charge of falsification was added of omitting to enter particulars of the twenty-three marriages and divorces in respect of which the $23/- were received, in certificate books.

The appellant was convicted on the first charge and acquitted on the other two.

The principal conflict in the case was as to whether the criminal breach of trust was committed by the appellant or by his clerk.

That the money was misappropriated there was no question.

It was suggested that the appellant who was a Kathi and an Arab and who objected to some religious rites practised in his district as contrary to pure Mohamedanism, was not in favour with the authorities while the clerk, who was related to certain rulers, was more favoured by the authorities with the result that it was sought to saddle the appellant and not the clerk with the misappropriation.

This point was made at the trial. It matters little whether we, the Judges of this Court, might think that had we tried the case we might have had doubts as to which to believe. There was undoubtedly evidence which, if believed, proved the case against the appellant. The trial Judge saw and heard the witnesses: he realised that it was a question of which of the two men took the money and he found that the clerk was an abettor as on his own evidence he concealed the appellant's misappropriation.

The second point in the appeal was that there was misjoinder of charges.

It was said that each of the three charges was in reality composed of twenty-three distinct offences.

So far as the first charge—criminal breach of trust—is concerned, the charge is really of a general deficiency of $23/-, the particulars being not so much particulars of separate misappropriations as indications as to how the deficit was arrived at. The actual money paid by these twenty-three persons may have been paid into revenue on some other account. This charge is good under section 153 (2).

Section 153 (2) is confined solely to criminal breach of trust and dishonest misappropriation of money and it does not cover the other two charges. So far as the second and third charges are concerned, the governing section is section 163 of the Criminal Procedure Code which reads:—

> "For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately, except in the cases mentioned in sections 164, 165, 166 and 170."

On receipt of each of these $23/- covering a period of almost a year from first to last it was the duty of the appellant to make or cause to be made a separate entry in the appropriate books and it was argued that each omission to make such an entry if the omission was to conceal or to facilitate fraud, was a distinct offence.

Section 165 provides that if in one series of acts so connected together as to form the same transaction more offences than one are committed by the same person, he may be charged with and tried at one trial for every such offence. The determining words are "the same transaction."

For two offences to be offences in "the same transaction" there must be a purpose and design common to each offence or, they must be related to one another as cause and effect. Some of the Indian cases referred to in the notes to the corresponding section in *Mallal's* Criminal Procedure Code and in *R. v. Sakandar Khan*[2], lay down that there must be continuity of action connecting one offence with another to make them parts of the same transaction. "Continuity" refers more to the relationship of cause and effect than to immediate succession in point of time.

There can be no doubt that any three of these falsifications would be an offence in the same transaction as the act of criminal breach of trust which it was designed to conceal or to effect, and as such could be tried with the charge of criminal breach of trust.

But when the criminal breach of trust is of a gross sum taken between dates not more than one year apart, it is one offence though made up of many items

taken on as many occasions (section 151) and it appears to us that when the falsification charged are confined to those items, the criminal breach of trust and the falsifications are so closely inter-related that the twenty-three falsifications become a single offence like the twenty-three breaches of trust which form a single offence and they are related to the criminal breach of trust items by community of purpose and they stand to one another in the relationship of cause and effect.

The falsification in respect of each of the twenty-three dollars was committed in the same transaction as the criminal breach of trust. The criminal breach of trust was one offence. The falsification was a composite offence, one may say a procedural offence to accomplish the criminal breach of trust—a kind of adjective offence, and just as the misappropriation of the twenty-three dollars over a period of just under a year was one offence, so the falsification by omitting to enter up these twenty-three dollars should be regarded as one offence.

Had the appellant been convicted on the second charge, he could only have received one sentence on that charge. He could no more have received twenty-three separate sentences than he could on the first charge.

Even if there had been no second charge, then, the receipt of the money having been proved, evidence of the falsifications could have been given, not to prove that the appellant was a bad character but as part of the *res gestae*.

The entries, or failure to make entries, in the books kept by the appellant are just as relevant to the charge of criminal breach of trust as is the finding of moulds and dies in the possession of a person charged with counterfeiting.

The appellant was in no way prejudiced by the second and third charges and in any case each of these charges was in reality a charge for a single offence each of which formed part of the same transaction with the single (though composite) offence of criminal breach of trust.

This ground of appeal therefore fails.

The appeal is dismissed.

Appeal dismissed.

[APPELLATE CIVIL JURISDICTION]

POYSER, C.J., McELWAINE, C.J. (S.S.) &

CUSSEN, J.

December 12, 1939.

RE KARTHIGASU ARUMUGAM *EXPARTE* J. K. R. LEONARD.

[SELANGOR CIVIL APPEAL No. 3 of 1939]

Bankruptcy Enactment (Cap. 55) Ss. 28 (ii), 78 (iii), 85 (i)—Conditional discharge—application by Official Assignee for directions—competency of.

A bankrupt was granted a discharge subject to a judgment for a specified sum being entered against him and subject to the condition that his net income in excess of $306/- per month be paid to the Official Assignee until the judgment had been satisfied. During a period of twelve months the debtor, in each month that his income exceeded $306/- paid the excess to the Official Assignee and the Official Assignee, on account of months when his income did not reach $306, allowed various refunds to the debtor, totalling $950/-. The Official Assignee moved the Court under Section 78 (iii) of the Bankruptcy Enactment for directions in relation to the order of conditional discharge. Gordon-Smith, J., before whom the motion came on for hearing confirmed the Official Assignee's interpretation of the Order and his action thereon and varied the Order by the addition to it of words sanctioning the refund from time to time to the debtor of the excess paid to the Official Assignee to make up the net income of the debtor to a sum of $306/-. The appellant appealed against Gordon-Smith, J's. order on the grounds, amongst others, that the Official Assignee had no **locus standi** in the matter and that only the bankrupt could apply for a revision of the order for discharge.

Held, that the application was properly made by the Official Assignee under Section 78 (iii) of the Bankruptcy Enactment.

In re John Roberts & Co. (3) distinguished.

Held further, that the Court of a Judge has a very wide jurisdiction, under Section 85 (i) of the Bankruptcy Enactment, to rehear an application for discharge and vary an Order of discharge, although such order has become effective.

In re a Debtor, (1) applied.

Cases referred to:—

(1) *In re Debtor*, (1939) 1 Ch. 489.
(2) *Milson v. Carter*, (1893) A.C. 638.
(3) *In re John Roberts & Co.* (1904) 2 K.B. 299.
(4) *In re Tobias & Co.*, (1891) 1 K.B. 463.

Braddell (*Ramani* with him) for the Appellant.

This Appeal relates to an Order granting conditional discharge to a debtor under Sec. 28 of the Bankruptcy Enactment.

The order can be varied under the *Proviso* to Sec. 28 (ii).

But the law is clear: